(44)

HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench : Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Dhirendra Mishra, JJ

Criminal Appeal No. 90 of 2000

Dhanu Ram

Versus

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Hon'ble Shri Justice L.C. Bhadoo

Sd/-
Judge
-07-2007

Hon'ble Shri Justice Dhirendra Mishra

Sd/-
Dhirendra Mishra
Judge

Post for 24 -07-2007

Sd/-
L.C. Bhadoo
Judge

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HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench : Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Dhirendra Mishra, JJ

Criminal Appeal No. 90 of 2000

Appellant/ Accused (In Jail)	:	Dhanu Ram, S/o Mohit Ram, aged 35 years, Cultivator, R/o Patelpara, Village Surta, Police Station Ramanujnagar, District Surguja (CG).
		Versus
Respondent :		State of Chhattisgarh, Through S.O.P., Ramanujnagar, Distt. Surguja (Chhattisgarh).

Present : Shri J.K. Shastri, counsel for the appellant.
Shri Sudhir Bajpai, Dy. Govt. Advocate for the State.

JUDGMENT

(Delivered on 24th July, 2007)

The following judgment of the Court was delivered by ***L.C. Bhadoo, J*** : -

1. The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 29-11-2000 passed by the Additional Sessions Judge, Surajpur, District Sarguja, in Sessions Trial No.13/1990 whereby he has been held guilty for commission of offences under Sections 302 & 323 of the Indian Penal Code, for causing death of Hari Bilas and causing simple injuries to Sukhmania, sentenced him to undergo imprisonment for life & to a pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for five months and to undergo R.I. for six months, respectively.

2. The case of the prosecution, in brief, is that on 30-10-1989 the accused was abusing Sukhmania (PW-6), resident of Patel Para of village Surta saying her as witchcraft. At that time, husband of Sukhmania was sitting near Dhanu Gond. Sukhmania came to Dhanu Gond and said that Dhanu Chetra is abusing her saying witchcraft; he should convene a Panchayat and get the matter settled. After saying so, Sukhmania and her husband Hari Bilas started go to their house. When they reacned near courtyard of their house accused Dhanu

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Chetra came carrying a lathi in his hand. Dhanu Gond asked him not to indulge in *marpeet*. On this, accused pushed Dhanu Gond, as a result of which he fell down. In the meantime, Sukhmania came and intervene. He attacked her with lathi. He also attacked Hari Bilas with lathi and after throwing the lathi on the ground the accused ran away. As a result of attack Hari Bilas sustained injuries on back, head and hand. Chintamani (daughter of the deceased) & Narbadia brought Hari Bilas to his house. Thereafter when they were taking him to Police Station, on the way, he succumbed to the injuries. The matter was reported by PW-6 Sukhmania, wife of the deceased, whereupon the First Information Report (Ex.P/5) was registered by the Station House Officer, Police Station Ramanujnagar. The Investigating Officer left for scene of occurrence. After giving notice (Ex.P/1) to the Panchas, he prepared inquest (Ex.P/2) on the body of Hari Bilas. The body of Hari Bilas was sent for postmortem examination to Primary Health Centre, Ramanujnagar under Ex.P/3A where Dr. G.J. Lakra conducted postmortem and prepared report (Ex.P/3). Doctor opined that the cause death was head injury i.e. extra dural hemorrhage. The death was homicidal in nature. Broken Bengal pieces were seized from the place of occurrence under Ex.P/7. Site plan (Ex.P/9) was prepared by the Investigating Officer. Lathi, weapon of the offence, was seized vide Ex.P/8 and the same was sent to Doctor under Ex.P/4A. Report of the Doctor is Ex.P/4, in which he opined that injuries No.1 to 3 found on the body of Hari Bilas could be caused by the lathi in question. Sukhmania was sent to Primary Health Centre for examination of her injuries. Dr. S.K. Gupta examined her injuries and prepared report (Ex.P/6). The Doctor found following injuries on the body of Sukhmania. He opined that the same were simple in nature

- Lacerated wound in the size of 3" x 1" on the right side of skull over the right parietal bone, clotted blood was present.
- Lacerated wound in the size of 1" x ½" over the border of right middle fore arm.
- Lacerated wound in the size of 1.5" x 0.25" on the outer aspect of left middle fore arm.
- Abrasion in the size of 2" x 0.5" over the upper border of left scapula.
- Contusion in the size of 3" x 0.5", reddish in colour, tnt over the right scapula and tenderness present over the left gluteal region .

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3. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Surajpur, who in turn committed the case to the Court of Sessions Judge, Ambikapur, from where learned Additional Sessions Judge, Surajpur, received the same on transfer for trial.

4. In order to establish the charge against the accused/appellant, the prosecution examined 10 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution case. He stated that he is innocent and has been falsely implicated in the crime on account of old animosity.

5. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

6. We have heard Shri J.K. Shastri, learned counsel for the appellant and Shri Sudhir Bajpai, learned Dy. Govt. Advocate for the State.

7. At the outset, Shri Shastri, learned counsel for the accused/appellant, has not disputed the homicidal death of Hari Bilas. Moreover, Sukhmania (PW-6), Dhannu @ Dhaneshwar (PW-7), Chintamani (PW-2) have stated that the accused/appellant attacked Hari Bilas with a lathi and Dr. George Jeevan Lakra (PW-5) has stated that on 31-10-1989 he conducted postmortem on the body of Hari Bilas and there were three injuries on the body of Hari Bilas. On dissection there was a haemorrhage under the injury No.1, under the injury No.2 clotted blood was present and under the injury No.3 clotted blood was present, swelling in the size of 2" x 2" on the right parietal bone, both the parietal bones were fractured. He has also stated that the injury No.3 was sufficient in ordinary course of nature to cause death. Death was homicidal in nature. In view of the ocular and medical evidence, it is established that the death of Hari Bilas was homicidal in nature.

8. As far as involvement of the accused in the crime in question is concerned, PW-6 Sukhmania, wife of the deceased, has stated that the accused used to abuse her saying her as witchcraft. On the fateful day, she along with her husband went to Dhanu Gond and requested him that the accused is abusing her; therefore, he should convene a meeting and get the matter settled. In the meantime, accused came

carrying lathi. When Dhanu Gond tried to intervene, accused pushed him, as a result of which he fell down. Accused attacked Hari Bilas with a lathi on his head. When this witness (Sukhmania) intervened, accused also attacked her with the same lathi, as a result of which Sukhmania sustained injuries. Both Sukhmania and Hari Bilas fell down. Accused ran away after throwing the lathi on the ground. Thereafter hearing the cries, villagers came and when they were taking Hari Bilas to Police Station, he succumbed to the injuries on the way.

9. The above evidence of Sukhmania has been corroborated by PW-7 Dhannu @ Dhaneshwar. He stated that on the fateful day, Sukhmania came to him and said that the accused is calling her as witchcraft & abusing and said that she is convening Panchayat there he should get the matter settled. In the meantime, Hari Bilas came on the spot. Accused also came there, he picked up lathi and attacked the deceased & Sukhmania. PW-2 Chintamani, daughter of the deceased and the injured, has also corroborated the above evidence. In cross-examination the defence has not been able to elicit anything, which discredits the evidence of these witnesses.

10. Learned counsel for the accused/appellant could not point out any illegality or infirmity in the judgment of the trial Court. He argued that when Sukhmania was complaining to Dhanu Gond about the accused, she was leveling false allegations against the accused, which enraged the accused and in sudden provocation the accused attacked the deceased, therefore, the offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

11. On the other hand, learned counsel for the State supported the judgment of the trial Court.

12. In order to bring the offence within the four corners of exception I of Section 300 of the I.P.C., the defence is required to bring on record that the accused on account of provocation, deprived of the power of self-control by grave and sudden provocation and he attacked. In order to test whether the accused attacked the person under the sudden provocation, the Court has to ascertain from the facts and circumstances of the case and based on the evidence available on record that the grave and certain provocation is whether a reasonable person belonging to the same class of society as the accused placed

in the similar situation would be so provoked as to loose self-control and take the life of another person.

13. If we look into the facts of the present case, as per the prosecution case the accused used to abuse Sukhmania saying her as witchcraft and on the fateful day, she went to Dhanu Gond and was saying to him that as the accused is abusing her calling as witchcraft, therefore, she is convening the Panchayat in order to settle the matter, he should come and help in settling the matter. In the meantime, the husband of Sukhmania reached there and accused also came, picked up the lathi and attacked Hari Bilas and Sukhmania. In the first instance, the deceased Hari Bilas has not stated anything; therefore, there was no cause for provocation. Even, Sukhmania had not stated anything to the accused, but she was requesting Dhanu Gond that as the accused is abusing her, therefore, he should come to Panchayat and help in settling the matter. When there were no talks between Hari Bilas, Sukhmania and the accused, there was no question of provocation to the accused. Without any rhyme or reason, the accused attacked the deceased on his head, as a result of which parietal bone was fractured and Hari Bilas died. When Sukhmania tried to intervene, the accused attacked her also with the lathi 3-4 times, as a result of which she sustained lacerated wounds on head and other parts of the body. Therefore, the manner in which the accused attacked on the vital parts of the body of Hari Bilas with a lathi, deadly weapon, as a result of which the parietal bone was fractured and Hari Bilas died, we are of the considered opinion that the accused attacked the deceased with an intention to cause his death as he was determined to cause his death that is why when Dhanu Gond tried to intervene he pushed him and thereafter when Sukhmania tried to intervene he also attacked her and ultimately he attacked deceased Hari Bilas to cause his death. Therefore, the trial Court has not committed any illegality or infirmity in reaching to the conclusion that the accused committed the murder of Hari Bilas.

14. From the evidence of PW-6 Sukhmania and PW-9 Dr. Sunil Kumar Gupta, who examined the injuries of Sukhmani, has stated that as many as five injuries were there on the body of Sukhmania, therefore, from the above ocular and medical evidence, it is established that the accused caused simple injuries to Sukhmania. Therefore, the trial Court has rightly convicted the accused under Section 323 of the I.P.C.

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15. For the foregoing reasons, we do not find any illegality or infirmity in the judgment of the trial Court convicting the accused for committing offences under Sections 302 & 323 of the Indian Penal Code.

16. In the result, the appeal being devoid of merit deserves to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Gowri